

SUSAN B. LUCE - State Bar No. 120843
DAVID A. BOONE - State Bar No. 74165
LAW OFFICES OF DAVID A. BOONE
1611 The Alameda
San Jose, CA 95126
Telephone: (408) 291-6000
Fax: (408) 291-6016

ATTORNEYS FOR DEBTOR/DEFENDANT
Kassandra Margrit Dennis

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	CASE NO. 08-54420 CDN
)	
KASSANDRA MARGRIT DENNIS)	CHAPTER 7
)	
)	(Adv.Pro. No. 08-5319)
Debtor)	
)	
)	Date: October 8, 2010
)	Time: 2:00 p.m.
)	Place: Room 3070
)	Honorable Charles D. Novack
)	

MOTION TO COMPROMISE CONTROVERSY

BACKGROUND

Kassandra Margrit Dennis, Debtor, respectfully represents:

1. Debtor filed for relief under Chapter 7 of the United States Bankruptcy Code on August 13, 2008.
2. Prior to her filing, the Debtor had been named in a law suit filed in the Superior Court of the County of Santa Clara, Case No. 106 CV 059205. A default judgment had been entered in the case against her in the amount of \$2,552,957.00 in favor of Lori and Glyn Stout and Lupin Heights, Inc., hereinafter, collectively, "Creditors".

1 3. On November 10, 2008, the same Plaintiffs filed adversary proceeding 08-5319,
2 seeking to have the default judgment deemed nondischargeable.

3 4. The Creditors alleged that they were entitled to use the default judgment for collateral
4 estoppel and issue preclusion in the adversary proceeding. They requested the Court give full
5 faith and credit to the default judgment and declare the debt owed to them by the judgment
6 nondischargeable.

7 5. The Debtor alleged that she had not been properly served and, therefore, the default
8 judgment was void and had no force nor effect. In order for the Debtor to prove she had not
9 been properly served, she had to go back to state court, seek to reopen the case and set the
10 judgment aside. After that, the entire complaint and any cross complaint would have to be
11 fully litigated.

12 6. The parties were antagonistic and neither side trusted the other. Settlement
13 negotiations were extensive and time consuming.

14 7. The parties, however, have finally agreed to compromise and they desire to settle and
15 discharge all claims and controversies between them. The parties have entered into a
16 Settlement Agreement and General Mutual Release, a copy of which is attached to the
17 Declaration of Susan B. Luce, filed herewith, hereinafter "SBL Dec."

18 8. The Settlement Agreement provides that the Debtor agrees to the entry of a
19 \$25,000.00 nondischargeable judgment in the adversary proceeding. Starting a month after an
20 order approving the Settlement Agreement is entered on the bankruptcy Court's docket, the
21 Debtor will commence to make monthly payments of \$250.00 to the Creditors. She will
22 deposit said amount in a trust account established by Nancy M. Battel, counsel for the
23 Creditors. If she defaults under the Settlement Agreement, then the nondischargeable
24 judgment will increase to \$50,000.00.

25 9. The Settlement Agreement allows for time to cure any default and for moratorium of
26 payments should it become necessary. The Creditors have agreed to vacate the default
27 judgment entered against the Debtor in the state court action. The Creditors also hold a
28 default judgment against Edward Dennis, the Debtor's husband. The Creditors have agreed

not to try and collect from the Debtor on the judgment owed by Edward Dennis by attaching or lienning any current property of the Debtor in which he might have a community interest.

10. In consideration of the concessions made by both parties, both parties will enter into a mutual release and waive the provisions of Section 1542 of the Civil Code of the State of California. This means they are giving up the right to not release existing claims of which they are currently unaware.

ARGUMENT

Pursuant to In re: A&C Properties, 784 F. 2nd 1377 (C.A. 9, 1986), the determination of the adequacy and reasonableness of a proposed settlement by the Court must include a consideration of the following factors:

a.) The probability of success in litigation:

The Debtor will face an uphill battle trying to set aside the default judgment. Although it appears she was not properly served, the state court case still will need to be reopened and the judgment set aside. This could take a considerable amount of time and a considerable amount of attorney's fees and costs to accomplish the vacating of the judgment. Even if the judgment were vacated, the Creditors would most likely prosecute their causes of action and a full trial would be necessary. At this time, evidence has become stale and witness are probably difficult to locate. Counsel would assign no more than a 50% chance of success for either side.

b.) The difficulties, if any, to be encountered in a matter of collection:

Debtor assumes that, were she able to set aside the default judgment and prevail on her counter claims, collection of any judgment would be difficult. The parties are extremely antagonistic, and it would take extensive discovery to learn of the Creditors' assets. She would probably face an appeal if she was successful.

c.) The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it:

The underlying lawsuit was filed in 2006. The Debtor believes that many of her

1 documents were left at premises now controlled by the Creditors. Aside from showing that
2 she was not properly served, the Debtor will have a difficult time in proving any cross claim
3 she may hold. As the parties are still extremely litigious, it is likely that discovery will be
4 extensive and time consuming. The attorney's fees to bring this case to trial will be very
5 large. The Debtor works as a massage therapist and does not have the funds to pay the cost of
6 such litigation.

7 **d.) The paramount interest of the creditors and the proper deference to their**
8 **reasonable views in the premises:**

9 It will be in the best interest of Creditors to end the litigation and close this case.

10
11 For the reasons stated above, the Debtor respectfully requests this Court approve this
12 Compromise of Controversy and allow her to proceed with the terms of the Settlement
13 Agreement.

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15 Dated: August 23, 2010

LAW OFFICES OF DAVID A. BOONE

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18 _____ /s/ Susan B. Luce
19 SUSAN B. LUCE
20 Attorney for Debtor
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